***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **CM(M) 560/2007**

% **Date of decision: 20th November, 2009**

**SHIVINDER SINGH** ……. Petitioner

Through: Counsel for the petitioner (appearance not given)

**Versus**

**SETTLEMENT OFFICER(SDM) NAJAFGARH & ANOTHER** ..... Respondents
Through: Mr. N.S. Dalal, Advocate for Respondent No.2

**AND**

**CM. A. No.7438/2009 in CONT.CAS(C)763/2006**

**LOKVIR SINGH** …… Petitioner/applicant

Through: Mr N.S. Dalal, Advocate

Versus

**SHRI S.B. CHANDAULIA, CONSOLIDATION OFFICER/TEHSILDAR (NAJAFGARH)** …...Contemnor/respondent
Through: Counsel for the contemnor/respondent (appearance not given)

***CORAM :-***
**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. Whether reporters of Local papers may be allowed to see the judgment? No

2. To be referred to the reporter or not? No

3. Whether the judgment should be reported in the Digest? No

**RAJIV SAHAI ENDLAW, J.**

1. Both the matters are interlinked and have been taken up together. The counsel for the petitioner requests for adjournment on the ground of non availability of Mr N.S. Vasisht counsel for Shri Shivinder Singh, the petitioner in CM(M)560/2007. Mr N.S. Dalal, counsel for Mr Lokvir Singh petitioner/applicant in the contempt case strongly opposes the adjournment and contends that Mr Shivinder Singh has been delaying both the proceedings. In the circumstances Mr N.S. Dalal, Advocate for Mr Lokvir Singh has been heard and the record perused. The matters have been pending for the last over two years and it is not deemed expedient to adjourn this hearing on the ground of non-availability of the advocate.

2. Mr Shivinder Singh had filed WP(C) 569/1992 in this court and which was disposed of vide judgment dated 6th December, 2004. The matter was remanded to the Consolidation Officer/Tehsildar to re-determine the location of khasra No.63/2 (West) as originally carved out at re-partition and it was further directed that the said land would be the one which has to be restored to the petitioner Shri Shivinder Singh.

3. Mr Lokvir Singh who was respondent no.3 in the writ petition aforesaid filed contempt case No.763/2006 which was disposed of vide order dated 15th September, 2006. It is significant that Mr Shivinder Singh was not made a party in the said contempt case and the court also had not issued any notice of the contempt case to him. The contempt was filed against the Consolidation Officer/Tehsildar, Nazafgarh only, for having, in pursuance to the judgment dated 6th December, 2004 in the writ petition, dealt with the matter and passed the order without regard to the scope of the remand as indicated in paras 21-25 of the judgment.

4. This court on 15th September, 2006 held that on the aforesaid pleas of Mr Lokvir Singh, no case of contempt was made out. This court, however, further held that there could be a possibility of Mr. Lokvir Singh being aggrieved about the legality of the order passed by the Consolidation Officer pursuant to the judgment aforesaid in the writ petition. This court therefore held that it would be open to Mr. Lokvir Singh to approach the Settlement Officer under Section 21(3) of the East Punjab Holdings (Consolidation

and Prevention of Fragmentation) Act, 1948 within one month from that order. It was further directed that upon Mr. Lokvir Singh so approaching the Settlement Officer, the Settlement Officer shall hear, entertain and decide the appeal on merits, unhindered by question of limitation, within four months after the filing of the appeal.

5. Mr Lokvir Singh instead of filing the appeal before the Settlement Officer within one month of 15th September, 2006 filed the same on 22nd February, 2007. The Settlement Officer on 19th March, 2007 issued notice of the said appeal inter alia to Mr Shivinder Singh and further directed both the parties to maintain status quo till further order and also stayed the operation of the order dated 28th May, 2005 challenged in the appeal before the Settlement Officer.

6. Shri Shivinder Singh preferred CM(M)560/2007 aforesaid against the aforesaid order of the Settlement Officer. It is his contention in the petition that since this court in order dated 15th September, 2006 in the contempt case had given one month time only to Shri Lokvir Singh to prefer an appeal to the Settlement Officer, he had filed a caveat in the court of the Settlement Officer to preempt the passing of any ex parte order; that Shri Lokvir Singh did not approach the Settlement Officer within the time permitted in the order dated 15th September, 2006; that the appeal now preferred by Shri Lokvir Singh is time barred and could not have been entertained by the Settlement Officer; that the reason given by Shri Lokvir Singh for delay in filing the appeal is "long winded". It is thus the contention of Shri Shivinder Singh that the appeal preferred by Shri Lokvir Singh before the Settlement Officer was without jurisdiction and null and void and hence the order dated 19th March, 2007 of the Settlement Officer is also without jurisdiction inasmuch as the proceedings before the Settlement Officer were in violation of the order dated 15th September, 2006 of this court in the contempt case (supra).

7. Notice of the CM(M) aforesaid was issued to the respondents therein on 11th July, 2007 and the matter is being adjourned from time to time. On 26th September, 2007 the Settlement Officer before whom the appeal of Shri Lokvir Singh as aforesaid was pending was restrained from passing a final order in the appeal.

8. It is the contention of Shri Lokvir Singh that when the CM(M) aforesaid was listed before the court on 13th April, 2009 it was suggested by the court that an application be filed by Shri Lokvir Singh in the contempt case aforesaid for extension of time given in the order dated 15th September, 2006 for preferring the appeal before the Settlement Officer. On that averment CM.No.7438/2009 was filed in disposed of contempt case No.763/2006. Notice thereof was issued and Shri Shivinder Singh has filed reply thereto. Shri Shivinder Singh in his reply does not dispute that the court had suggested the filing of the application but disputes that it was also observed that on the application being filed the same would be allowed.

9. Thereafter both the matters i.e., the application in the contempt case and the CM(M) are being repeatedly adjourned.

10. Shri Lokvir Singh has in CM.No.7438/2009 sought the relief of extending the time granted in the order dated 15th September, 2006 in the contempt case till the date of actual filing of the appeal on 22nd February, 2007. The reason given therefor is that after the order dated 15th September, 2006 in the contempt case, legal opinion was sought thereon i.e. whether that order should be challenged or appeal as suggested in the order be filed before the Settlement Officer; that the advocate engaged in this regard took his own time and also assured Shri Lokvir Singh that the challenge to the said order could be made within 90 days; that subsequently a second opinion was taken from another advocate who advised the filing of an appeal before the Settlement Officer as suggested in the order dated 15th September, 2006. The advocate consulted by Shri Lokvir Singh has also filed his own affidavit in this regard. Yet another reason for delay given is that Shri Lokvir Singh, during the said time, was also engaged in the proposed marriage and engagement ceremony of his niece whose father is not alive and who resides with the said Shri Lokvir Singh. The same reasons for condonation of delay were stated in the application for condonation of delay filed alongwith the appeal before the Settlement Officer.

11. The aforesaid facts would show that the only question to be considered in both the matters is about the extension of time given by this court on 15th September, 2006 (supra). In this regard, the observation above of the said time having been granted by the court in the absence of Shri Shivinder Singh and Shri Shivinder Singh having not challenged the same becomes relevant. It is not as if with the consent of Shri Shivinder Singh time of one month only was granted and which could not have been thereafter altered without the consent of Shri Shivinder Singh. The said time of one month for preferring the appeal was granted by this court of its own, as the time deemed reasonable by this court and which would be required by Shri Lokvir Singh in preferring the appeal. At that time the pleas of Shri Lokvir Singh as now stated for condonation of delay were not before this court. I am inclined to believe the reasons stated by Shri Lokvir Singh for extension of time given in the order dated 15th September, 2006 for filing the appeal. In my opinion no question of prejudice to Shri Shivinder Singh arises. Admittedly, the order of the Consolidation Officer was appealable before the Settlement Officer. However, Shri Lokvir Singh at that time instead of preferring the appeal, finding the same to be in contravention of the scope of remand in terms of paras 21-25 of the Judgment dated 6th December, 2004 in WP(C)569/1992 preferred the contempt case aforesaid. This court on 15th September, 2006 though noticed the contention of Shri Lokvir Singh about the order of the Consolidation Officer being not in consonance with paras 21 to 25 of the judgment of this court, did not negate the same but held that the same ought to be adjudicated in the appeal before the Settlement Officer rather than in the contempt proceedings. It was in this view of the matter that it was ordered that upon appeal being preferred before the Settlement Officer, the same would be decided on merits unhindered by question of limitation. There was no other sanctity to the time of one month being granted by this court save for the same being then considered reasonable for availing the opportunity of appeal. The explanation of Shri Lokvir Singh of having consulted advocates for exploring the possibility of challenging the order dated 15th September, 2006 is not contrary to normal human conduct. Again it was not at the asking of the counsel for Shri Lokvir Singh that the option of preferring the appeal was given. It was by the order of this court.

12. It is settled principle that the court is entitled to extend the time granted/fixed by it for various actions even after the expiry of time. In the facts of the present case I find this to be a fit case for exercising the power. No malafides have been pointed out in the delay on the part of Shri Lokvir Singh in preferring the appeal save that the caveat filed by Shri Shivinder Singh had lapsed. However, the same should not deprive Shri Lokvir Singh from the remedy of appeal available to him and from having the matter decided on merits.

13. Accordingly, CM.No.7438/2009 in contempt case No.763/2006 is allowed. The time granted by the order dated 15th September, 2006 to Shri Lokvir Singh for preferring an appeal before the settlement Officer is extended till the date of filing of the appeal. The challenge in CM(M) was only on the basis of the appeal having been preferred beyond the time granted on 15th September, 2006. Upon the said time being extended, the CM(M) does not survive and is dismissed.

14. The counsel for the petitioner at this stage states that since Mr N.S. Vasisht is not present, the CM(M) be dismissed in default of appearance and the application in contempt case be decided ex parte. However, the counsel having appeared and moreover the counsel for Shri Lokvir Singh having been heard and the records having been perused, the question of following the said procedure does not arise.

5. Upon the dismissal of CM(M)560/2007, the interim order made therein restraining the Settlement Officer from passing final order in the appeal preferred by Shri Lokvir Singh is vacated. The parties are left to bear their own costs.

**RAJIV SAHAI ENDLAW**
**(JUDGE)**

**November 20, 2009**
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